

from Merriam-Webster's Collegiate Dictionary (taken from www.yourdictionary.com): "1. an alcoholic beverage usually made from malted cereal grain (as barley), flavored with hops, and brewed by slow fermentation.";

www.allwords.com: "an alcoholic drink brewed by the slow fermentation of malted cereal grains, usually barley, flavored with hops, eg ale, lager and stout";

✗ The American Heritage® Dictionary of the English language: "A fermented alcoholic beverage brewed from malt and flavored with hops";

Webster's 1828 Dictionary, (via www.christiantech.com): "A spirituous liquor made from any farinaceous grain; but generally from barley, which is first malted and ground, and its fermentable substance extracted by hot water. This extract or infusion is evaporated by boiling in caldrons, and hops or some other plant of an agreeable bitterness added. The liquor is then suffered to ferment in vats. Beer is of different degrees of strength, and is denominated small beer, ale, porter, brown stout, &c., according to its strength, or other peculiar qualities.";

WordNet 1.6 Vocabulary Helper (www.notredame.ac.jp): "fermented alcoholic beverage brewed from malts and hops";

Dictionary.com (www.dictionary.com): "1.a. A fermented alcoholic beverage brewed from malt and flavored with hops." (Copies of these definitions are enclosed.)

Nothing in Papazian is contrary to this normal and well-understood meaning of the term "beer."

In contrast, a wine beverage is clearly understood to differ from a beer beverage with respect to ingredients, fermentation process, flavor and the like. None of the definitions of beer associate beer and wine, albeit both are alcoholic beverages and both are fermentation products. There, the similarity ends.

Conversely, the definition of wine does not include or comprehend beer.

For example, Webster's New Collegiate Dictionary, (1980) page 1333: "**1 a:** fermented grape juice containing varying percentages of alcohol together with ethers and esters that give it bouquet and flavor **2:** the usu. Fermented juice of a plant product (as a fruit) used as a beverage.";

Webster's 1828 Dictionary (www.christiantech.com): "1. The fermented juice of grapes; as the wine of the Madeira grape; the wine of Burgundy or Oporto. 2. The juice of certain fruits, prepared with sugar, spirits, &c.; as currant wine; gooseberry wine.";

and Wordnet 1.6 Vocabulary Helper: "fermented juice (of grapes, especially)".

See also the definitions of "wine" from www.dictionaries.com, and Merriam-Webster's Collegiate® Dictionary (Online edition). Copies of all of these definitions are also enclosed.

While, at a minimum, therefore, beer and wine are distinct types of alcoholic beverages, the former being characterized by inclusion of hops, an ingredient not found in wine beverages, beer and wine beverages further differ with respect to the conditions of fermentation and types of yeast used in the fermentation process.

In response to Applicant's arguments filed May 3, 2000, the Examiner characterizes the argument for patentability of claim 8 as being that Papazian uses a different process from that recited in claim 1. The Examiner counters that the claim is directed to a product, not the method of manufacture.

Applicant agrees that claim 8 is directed to a product, albeit one defined by the method of production. However, it is not merely because of the difference in method steps, but the differences in the reactants and reaction conditions used in the method that result in the differences in the respective products.

That is, claim 8 is directed to an "alcoholic coffee wine drink", whereas what is suggested by Papazian is an "alcoholic coffee beer drink."

The Examiner has stated, however, that there can be no difference between a wine and a beer based on differences in the source of the coffee flavor. Thus, in reply to Applicant's statement that "the extraction residue is totally different from the coffee obtained from freshly ground beans ... " the Examiner replies that Applicant has not stated what those differences might be. The Examiner suggests, however, that the same chemicals, but in lower concentrations, would be found in ground extract coffee residue as found in non-extracted coffee, but in lower concentrations.

However, even if the concentrations of ingredients were the only difference (an assumption with which Applicant does not agree), such difference, alone, should preclude a rejection for anticipation under 35 USC 102. If the compositions are different because of concentration differences, the compositions are still different and one does not anticipate the other. It is error to ignore amounts, whether implicitly or explicitly recited in the claims under examination.

The hypothetical example in paragraph 8, page 4, of the Office Action, is not believed to be relevant to the scope of claims 8 and 9. For instance, depending on the temperature of the water used for extraction, different components as well as different concentrations might be extracted. Moreover, even at the same temperature, varying the quantity of water would effect

the composition of the extract depending on the solubilities of the complex mixture of ingredients in the starting coffee material.

Indeed, the Examiner is believed to place too much reliance on the disclosure of Papazian. The reference does not disclose any particular or specific alcoholic coffee beverage but only generalizes as to one type of beverage combination, namely, Blue Mountain Stout (which is not a wine and does not have the same composition as a wine or as other beer beverages) and “the most exotic of Jamaican coffee beans” or otherwise, “freshly ground beans” which should be steeped in non-boiling water during the final five minutes before straining and sparging.

Applicants simply cannot agree that this disclosure is anticipatory of an alcoholic coffee wine drink, much less, the claimed alcoholic coffee wine drink as defined in claims 8 and 9. The drink envisaged by claims 8 and 9, is not a blend of Blue Mountain Stout with coffee prepared from freshly ground Jamaican or other freshly ground coffee beans.

The Examiner further errs in the rejection of claims 8 and 9, by failing to take into consideration the unequivocal recitation in claim 8, that this claim is directed to a wine drink. Despite the Examiner’s assertion (see paragraph 9 on page 4 of the Office Action) that Imperial Stout could be construed as a wine, since it is (allegedly notoriously well known) as “malt wine” Applicant is not aware, as asserted, without evidence, that Imperial Stout, or even a product known as “malt wine” is produced with wine yeast, or considered by those of ordinary skill in the art, as a wine or a beer.

In fact, a listing of wines, taken from “wineloverspage.com/lexicon/words.shtml” (copy enclosed) which includes approximately 400 wine types and wine terms, does not include the terms “malt” or “stout.” On the other hand, the following web pages, found in a search for the terms “imperial and stout” found the following items, all identifying “Imperial Stout” as a beer:

“Bert Grant’s Imperial Stout” (www.grants.com/beer/imper/imper_1b.htm);

“Samuel Smith’s Imperial Stout” (www.magnet.fsu.edu/beershots/beers/smithstout.html); from the “Beershots Photo Gallery”;

“Gambrinus’ Mug: Yep, That’s Stout Imperial Stout”; “Blackberry Imperial Stout”; “Darth Vader’s Imperial Stout (The Dark Side)” each from “An interactive beer recipe database”;

“Smuttynose Imperial Stout” (“the first in the “Big Beer” series”);

“Victory Storm King Imperial Stout” (“the beer displayed a big licorice nose ... ”);

“Old Rasputin Russian Imperial Stout” (“rich intense brew with a robust palate, a fruity nose and a warming finish.” “These folks don’t fool around with their beers.” From The BrewGuide February 1998; Gold Medal in the 1995 World Beer Championships);

“Imperial Stout” (Muntons Gold); (see picture).

More particularly, the article “Beer: Stout & Porter” by Marc Dornan (www.tastings.com/beer/stout_porter.html) (copy enclosed) includes Imperial Stout and provides the following review of Imperial Stout:

Imperial Stout. Imperial Stout is an extra strong version of stout that was originally brewed by the British to withstand the rigors of export to Russia and the Baltic States. This style is dense, opaque black and strong in alcohol (6-7%), with a note of sweetness. Burnt cocoa and dried fruit flavors are typical. Russian Imperial Stouts originate from recipes that British brewers tailored to the tastes of the Imperial Russian court. Imperial stout was almost extinct until recreated by the British brewer Samuel Smiths in the early 1980s. The style has now been embraced by US craft brewers as a winter specialty.

Not only do the above descriptions not refer to “wine” but none of the Imperial Stouts, from a list of eighteen different Imperial Stouts found in a search of the tastings.com database (copy enclosed), identify or suggest that these products are anything other than a category of beer.

“Imperial Stout” is also defined at the web site:

“catalog.com/happydog/Instorewebsite/stoutalehome.html” (copy enclosed) as a “high alcoholic drink [which] has lots of dark roasted malts and high levels of hopping to balance. There is almost a ‘tar like’ intensity to the full bodied beer.”

No information was found for “malt wine” but the following article found for “barley wine” clearly identifies this product as a beer. Thus, the article “Heavy gravity, man” from Michael Jackson’s Beer Hunter, provides a review of barley wine, noting that “brewers” (associated with beer) are also wine merchants. This article particularly discusses “Adnams Tally-Ho Barley Wine” and notes, in general that “[w]ithin the selection of strongish winter brews, a barley wine is usually at the upper end of the scale, between 6.0 and 12.0 percent alcohol by volume, or even slightly more.” The author further notes that the origins of the designation “barley wine” are not certain, but refers to the “notion of producing a beer to match ‘foreign wines’ ... “ and the author guesses “that it especially implied a beer with a strength approaching that of a wine, though it could also suggest a vinous flavor.” Nevertheless, there is no doubt that despite the appellation of “wine” the term “barley wine” refers to a beer product not a wine.

All of the above definitions of “beer” and descriptions of Imperial Stout, and barley wine, are consistent with the fact that beers are made with and use hops and have the flavor of hops distinctive of beers (see also the enclosed copy of the article on “beer” from the online version of the Encyclopedia Britannica and compare to the article on “wine” from the same source). Wine beverages are not made with hops.

Furthermore, irrespective of the categorization of products such as “barley wine” the disclosure of Papazian relates to and describes only (at most) addition of freshly ground coffee to Blue Mountain Stout, so the meaning of “malt wine” or “barley wine” is not relevant to the issue of whether Papazian is anticipatory of claims 8 and 9. Applicants’ alcoholic wine drink is not Blue Mountain Stout.

It is respectfully submitted that no further substantive evidence is required to establish, even giving the pending claims the broadest reasonable scope of coverage, that a “coffee wine” is different from a “coffee beer” in composition, flavor, character, ingredients, taste, aroma, etc.

As for the suggestion in paragraph 10 (page 5) of the Office Action, Applicant does not agree that the “instant product is merely coffee mixed with a fermentable substrate that is then fermented. Again, the type of yeast will not produce a distinguishable product.”

First, claim 1, from which claims 8 depends, and claim 9, specifically, identify the yeast as wine yeast, specifically, wine yeast of the species *Saccharomyces cerevisiae*. There simply is no basis for suggesting that the fermentation product obtained using wine yeast will be the same as the product, even when using the same substrate, as obtained using a different species of yeast, associated with production of beer.

In any case, it is respectfully submitted that claim 1, incorporated into claim 8, is directed to a specific type of product, i.e., an alcoholic wine drink. Necessarily, therefore, the claim implicates certain constraints on the fermentation process, namely, conditions, substrates, etc., which will result in production of wine. The particular fermentation conditions, which are not, *per se*, part of Applicants’ invention, will be different than the fermentation conditions used in production of beers.

The present invention provides a coffee wine drink that is produced by fermenting an extraction residue (coffee-grounds), as a raw material, together with appropriate saccharide(s). The extraction residue is the remainder after a coffee extract has been recovered from roasted coffee beans. As such, the extraction residue is substantially free of coffee flavor.

Accordingly, the coffee flavor which is generated by the fermentation of this extraction residue of roasted coffee beans as in the present invention, will clearly and necessarily be different from the coffee flavor and other ingredients obtained using freshly ground coffee beans, as suggested by Papazian. While the specific ingredients in Applicants' product have not been identified, this alone does not require a conclusion that the residue remaining after a coffee extract is recovered from freshly roasted coffee beans, will be similar to (e.g., differing only in concentration) to the ingredients in the freshly roasted/ground coffee beans.

For all of the above reasons, the rejection of claims 8 and 9 as anticipated by Papazian, is respectfully traversed.

With regard to the remaining claims, which stand rejected as obvious over the combination of Papazian with Rizzi et al alone or further in view of Suzuki, it is apparent that the secondary references are relied on only with respect to specific components used in the production process, but otherwise do not provide an independent basis for rejection of the invention process.

Moreover, it is submitted that neither Rizzi et al or Suzuki, would have led the practitioner to expect that the use of an extraction residue of roasted coffee beans, would, when subjected to fermentation, result in a drink having a coffee aroma and a coffee taste, whereas the extraction residue itself, before the fermentation step, is substantially free of coffee flavor.

Therefore, the rejections of claims 1-4, 8-10, 12-16, and 11, under 35 USC 103(a), are respectfully traversed.

Favorable reconsideration of the subject application is earnestly solicited.

Respectfully submitted,
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